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Economy and Democracy: a review

The basis for this paper is a course of lectures named “Economy and Democracy”, held in Dubrovnik (Croatia) from 20th to 27th September 2008. I was fortunate enough to have participated in this course as a member of the Zagreb Law Faculty group. Also present were the Central European University postgraduate students which came from all over the world (Russia, Georgia, Lithuania, Moldova, Serbia, Nigeria...). Attending professors were: Professor Ivan Šimonić, Professor Tibor Várady, Professor Stefan Mes-smann and Professor Tibor Tajti. During this course a wide variety of legal themes were discussed and thoroughly worked out, namely the fields of international business law, civil law, constitutional law and family were addressed.

I would like to take this opportunity to analyse the questions of family law. Professor Tibor Várady delivered several lectures concerning the Soviet Legal Innovation and the Law of the Western World, in which numerous interesting issues were analysed and discussed. The lecture was based on John Quigley’s book¹ of the same title.

Ad 1. DOMESTIC RELATIONS REGULATION IN THE WESTERN WORLD (beginning of the 20th century)

While reading this book and preparing for the lecture, I was surprised by the level of inequality between genders both in Russia and in countries of the Western World at the beginning of the 20th century. I knew that at that time family relations were patriarchal in structure and that the husband was the undisputed head of the family. Still, I did not expect the position of the wife to be so unfavourable, i.e. that her rights were almost non-existing.

For example, English common law allowed the husband to beat his wife. This was his right of chastisement over the wife.² Furthermore, it also prescribed that the husband was the legal representative of his wife.³ Indeed, this meant that a married woman could not represent herself in any legal proceedings.

The German Civil Code gave the husband the right to decide about all matters of matrimonial life.⁴ In fact, this meant that the husband was the bearer of all important family decisions, including choosing the place of residence. Furthermore, it gave the husband the right to manage his wife’s property and to give his wife’s employer notice of termination of employment.⁵ Provisions of this kind are unimaginable in today’s legisla-

¹ J. QUIEGLY, *Soviet Legal Innovation and the Law of the Western World*, Cambridge University press, 2007.

² *Ibid.*, str. 17.

³ *Ibid.*, str. 18.

⁴ *Ibid.*

⁵ *Ibid.*

tion because women have every right to manage their property, not to mention to make employment decisions for themselves.

Furthermore, it was widely accepted in Europe that if a woman is to marry a man of different citizenship, her citizenship is to be automatically changed to that of her husband, example of which is Norway's marriage law of 1918.⁶

In the beginning of the 20th century the matter of divorce drew a lot of attention. In Europe divorce was severely restricted. Furthermore, it was typically less accessible to women than for men. The rule was that a spouse had to prove a breach of the marriage contract in order to obtain a divorce (example: in France divorce was available only in cases of adultery, condemnation to infamous punishment, or grave violation of marital duties).⁷

Ad 2. RUSSIAN LAW ON THE FAMILY UNDER THE TSARS (until 1917)

Russia under the tsars, i.e. until 1917, was enforcing similar principles of family law as countries of the Western World, meaning that women in Russia were also unequal to men. For example, a wife was obliged to obey her husband as head of the family and to reside at a location selected by the man.⁸ From this one could conclude that, like in Germany or England, the husband made all decisions concerning the family (wife and the children). Furthermore, husband had legal power over his wife, meaning he was her legal representative and could, for example, prohibit her from taking a job outside the home.

In addition, if a Russian woman married a foreigner she would have lost her Russian citizenship.⁹ Concerning marriage and divorce, it is important to emphasise that they were not handled by government courts, but through ecclesiastical rules and institutions. Divorce was not available to Roman Catholics. On the other hand, for Russian Orthodox, divorce was possible only upon proof of specific grounds.¹⁰

Ad 3. SOVIET LEGAL INNOVATION IN DOMESTIC RELATIONS LAW (1917, 1918 and 1926)

After gaining power, Lenin and the Bolshevik party declared the tsar's legislation void. In its place they wanted to install new enactments, grounded on legal concepts that would challenge the foundations of Western society.

This legal revolution began in 1917 with the adoption of two separate decrees on marriage and divorce. One year later, in 1918, a full Code on family law was enacted. This family law was based on assumptions of equality between women and men, giving women equal rights in all matters relating to marriage.¹¹ Many of the ideas contained in the above law posed a challenge to the traditional family and to property rights. Nevertheless, the West absorbed many of the ideas it originally found threatening.

⁶ Ibid, str. 19.

⁷ Ibid.

⁸ Ibid, str. 20.

⁹ Ibid.

¹⁰ Ibid, str. 19.

¹¹ Ibid, str. 20.

The 1918 Soviet family code

1. MARRIAGE:

Marriage could be contracted only with the consent of both spouses.¹²

2. DIVORCE

Divorce was to be granted at the request of either party, without any proof of grounds. If both spouses sought a divorce, they could, instead of going before a judge, simply register their divorce at the civil registry, which was considered as a significant challenge to the traditional family.¹³

3. PROPERTY RIGHTS:

Marriage does not create commonality of the property of the spouses, meaning the wife controlled her own property.¹⁴ The idea was to reduce economic consequences of marriage and to create financial autonomy between the spouses, which was considered as a significant challenge to property rights.

4. ALIMONY:

No provision on alimony was made in the 1918 Code. Non-existence of provision concerning alimony was, in my opinion, confusing. What was the reason for this legal vacuum? My presumption is that the Bolshevik government wanted to realize the principle of equality to the full extent, meaning there was no need for spousal support. But even if we can agree with such a presumption, and we cannot, there is still the issue of child support left unresolved. This problem was solved with the 1926 Soviet family code.

5. DECISIONS CONCERNING THE FAMILY:

The wife was given equal legal authority with the husband in decisions affecting their children.¹⁵ If one spouse were to change residence, the other was not obliged to follow.¹⁶

6. CITIZENSHIP:

Marriage would effect no change in citizenship if the nationality of the spouses differed.¹⁷

As we can see, the 1918 Soviet family code brought lots of innovation in the domestic relations realm and those innovations broke with tradition, but this was not the main problem. The main problem was that this code was too advanced to be practical. It was just too far ahead of its time. There was a huge gap between the existing conditions of the Soviet society and the principles enforced by this code. For example, the 1918 family code separated property of the spouses. This provision actually disadvantaged women upon divorce because in the 1920s unemployment was high and women could not find work in an economy in which men were the main breadwinners.¹⁸ The Soviet economy lagged behind with respect to the law. This conclusion leads us to two very important questions. First, is it good or beneficial to enact laws ahead of their time? Second, will advanced laws stimulate development of society or should it be the other way around?

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid, str. 21.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid, str. 24.

The 1926 Soviet family code

The new Code was less radical than the previous one. It deemed property earned by the spouses during the marriage as community property.¹⁹ By doing so, the legislator wanted to protect the financial interests of women because they had not reached the earning capacity of men and therefore the social base for financial autonomy did not exist.²⁰ In that manner, the legislator also wanted to ensure proper care of the children. The 1926 Family code recognized the *de facto*, or common law, marriage. It said that informal marriages were the equivalent of registered marriages for purposes of property rights.²¹ This code also provided for the possibility of alimony. Alimony could be ordered only if one of the spouses was unable to work, or, though able to work, was unemployed. Alimony could be collected only for one year after the marriage ended.²² This provision on alimony is also not the most effective one because it prescribes financial support of the spouse for only one year after the marriage ended and there are no exceptions made. What happens if, in that time, the supported spouse really could not find a job or had an accident and became handicapped for life? According to the 1926 Family code, that spouse did not have legal grounds to seek alimony if the one year term had expired.

It is obvious that the 1926 Family code amended some of the earlier over-revolutionary principles. It took a few steps backwards and, by doing so, reduced the lack of balance between the advanced law and the not-so-advanced society. In that manner, it made its provisions realizable and more effective. This also demonstrates that no matter how good or advanced laws are, they have to have a connection with reality/the actual society. Otherwise, they could produce unwanted consequences.

CONCLUSION

During the discussion on John Quigley's book, several important questions were raised... I have already mentioned the first two questions. First, is it good or beneficial to enact laws ahead of their time? Second, will advanced laws stimulate development of society or should it be the other way round? Third, and for me the most interesting one, did Soviet legal innovation in the Family Law jurisdiction influence countries of the Western World or did they have a parallel and separate process of development? There is no universal or final answer to these questions. Possible answers can help us in better understanding the development of domestic relations law in two completely opposite sides of the world: in countries of the Western World and the Soviet Union.

Be as it may, the Dubrovnik Course/Seminar was definitely a great occasion for improving legal knowledge and discussion skills. It was also a great opportunity to meet interesting people, students and professors, from all over the world and to get an insight into their legal standings and opinions, especially concerning family law-related issues (as well as many other interesting law-related topics). For me this Seminar/Course represents the beginning of further international training? of postgraduate students of law. For this reason, I hope that the tradition of holding this very important Course/Seminar will continue for many years to come and that I will be present at the next year's Course/Seminar.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid, str. 25.